



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 24 2014

VIA FIRST CLASS MAIL

Malraj de Silva

Chino Hills, CA 91709

RE: MUR 6826
Malraj de Silva

Dear Mr. de Silva:

On May 28, 2014, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On October 21, 2014, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe that you violated 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441e(a)). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding is enclosed.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", followed by a long horizontal line.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Sanje Sedera
Committee to Elect Sanje Sedera
Malraj de Silva

MUR: 6826

6 **I. INTRODUCTION**

7 This matter was generated by a complaint alleging that Sanje Sedera, a candidate for state
8 office in Nevada, received an in-kind contribution from a foreign national in violation of the
9 Act's prohibition on foreign national contributions.¹ The Complaint's allegations are based
10 entirely on representations in a post in the *Asian Tribune*, an online media publication,
11 concerning a May 2014 fundraiser for Sedera held at the residence of Malraj de Silva. The
12 online posting described de Silva as the "Sri Lanka General Consul for the US Western States."²
13 Relying on this description, the Complaint concludes that de Silva must be a foreign national
14 and, therefore, that he made and Sedera's authorized state committee accepted a prohibited in-
15 kind contribution from a foreign national when de Silva hosted the fundraiser at his home.³

16 Sedera and the Committee submitted a joint response, and de Silva submitted a separate,
17 notarized response.⁴ Sedera, the Committee, and de Silva ("Respondents") admit that de Silva
18 held a fundraiser for Sedera, but deny that doing so violates the Federal Election Campaign Act
19 of 1971 (the "Act.") Each Respondent further represents that de Silva is not and has never been

¹ 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441(a)).

² Compl. at 5, Daya Gamage, *Sanje Sedera Candidacy for Nevada Legislature Gathers Momentum*, ASIAN TRIBUNE (May 8, 2014).

³ Sedera's authorized state campaign committee is the Committee to Elect Sedera (the "Committee"), a Respondent in this matter.

⁴ Sedera Resp. at 1 (Jun. 18, 2014); de Silva Resp. at 1 (Jun. 20, 2014).

1 the Consul General of Sri Lanka; is a U.S. citizen and, as a U.S. citizen, may lawfully make
2 contributions to local, state, and federal elections.⁵

3 As described below, de Silva does not appear to be a foreign national. Accordingly, the
4 Commission finds no reason to believe that de Silva made or that Sedera or the Committee
5 accepted a prohibited contribution in violation of 52 U.S.C. § 30121(a) (formerly 2 U.S.C.
6 § 441e(a)).

7 II. FACTUAL BACKGROUND AND ANALYSIS

8 A. Facts

9 In 2014, Sedera was a candidate for Nevada State Assembly District 34. In connection
10 with his candidacy, Sedera was required to file a financial disclosure form and periodic
11 disclosure reports with the office of the Nevada Secretary of State, which that office maintains in
12 a publicly accessible online database.⁶ According to those filings, Sedera received \$2,150 in
13 small contributions on May 3, 2014, the date of the fundraiser.⁷

14 De Silva's response states that he is a U.S. citizen and that, contrary to the *Asian Tribune*
15 posting, he is not and has never been the Consul General for Sri Lanka.⁸ De Silva notes that, as a

⁵ Sedera Resp. at 1; de Silva Resp. at 1.

⁶ See NEVADA SECRETARY OF STATE, <http://nvsos.gov/SoSCandidateServices/AnonymousAccess/CEFDSearchUU/CandidateDetails.aspx?o=ZgZY2gCHxDXO%252bU7AdR5ItQ%253d%253d> (last visited Sept. 5, 2014).

⁷ See Sanje Sedera, Contributions & Expenses Rpt. at 3 (May 20, 2014), available at <http://nvsos.gov/SoSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=NGcFRka%252fyAxlYrT4OWqgg%253d%253d>.

⁸ See de Silva Resp. at 1 ("I am not the Consul General for Sri Lanka and was not the Consul General at the time of the activity apparently reported by a newspaper."). De Silva acknowledges that the Ministry of External Affairs of Sri Lanka has approached him about the possibility of becoming the next Consul General of Sri Lanka of Los Angeles, but states that he has not decided whether to accept such a position. *Id.* at 1.

U.S. citizen, he is entitled to participate in lawful activities, including hosting fundraisers for persons in contested elections.⁹

B. Analysis

A contribution is any gift, subscription, loan, advance, or anything of value made by any person for the purpose of influencing any election for federal office.¹⁰ Commission regulations define "anything of value" to include in-kind contributions, that is, the provision of goods or services without charge or at a charge that is less than the usual and normal charge.¹¹

It is unlawful for "a foreign national, directly or indirectly, to make . . . a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election."¹² It is also impermissible for "a person to solicit, accept, or receive a contribution or donation" from a foreign national.¹³ Even if a person lacks actual knowledge of the foreign national status of a potential contributor, that person will have "knowingly" accepted a prohibited foreign national contribution if he is aware of facts that would lead a reasonable person "to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national" or "to inquire whether the source of the funds . . . is a foreign national" without conducting such an inquiry.¹⁴ The prohibition against contributions by foreign nationals does not

⁹ *Id.*

¹⁰ 52 U.S.C. § 30101(8)(a)(i) (formerly 2 U.S.C. § 431(8)(a)(i)).

¹¹ 11 C.F.R. § 100.52(d)(1).

¹² 52 U.S.C. § 30121(a)(1) (formerly 2 U.S.C. § 441e(a)(1)).

¹³ *Id.* § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)).

¹⁴ 11 C.F.R. § 110.20(a)(4)(ii)-(iii).

1 apply to an individual who is a citizen of the United States or lawfully admitted for permanent
2 residence in the United States.¹⁵

3 The Complaint contends that de Silva is the Sri Lankan Consul General and therefore
4 must be a foreign national, and that, as such, de Silva and Sedera violated the Act's prohibition
5 on foreign national contributions when de Silva hosted the fundraiser in his home on behalf of
6 Sedera.¹⁶ These allegations are based exclusively on the reference to de Silva being the "Sri
7 Lanka General Consul for the US Western States" in the *Asian Tribune's* summary of the
8 fundraiser.¹⁷

9 However, no evidence in the record substantiates these allegations, which are predicated
10 entirely on a supposition. Respondents expressly deny that de Silva is a foreign national and
11 claim that the *Asian Tribune's* characterization of him as Consul General is a "blatant error."¹⁸
12 Furthermore, the assumption underlying the Complaint's allegations is flawed. Even if de Silva
13 held the position of Consul General for Sri Lanka, that fact would not be *prima facie* evidence
14 that he is a foreign national, as the position is a bureaucratic office that need not be held
15 exclusively by a citizen of the country represented by the Consulate office.¹⁹

¹⁵ See 52 U.S.C. § 30121(b) (formerly 2 U.S.C. § 441e(b)) (providing that "the term 'foreign national' shall not include any individual who is a citizen of the United States" or an individual who is "lawfully admitted for permanent residence"); see also FEC, FOREIGN NATIONALS at 2 (July 2003), http://www.fec.gov/pages/brochures/foreign_nat_brochure.pdf (describing "green card" exception to foreign nationals prohibition applicable to lawful permanent alien residents).

¹⁶ Compl. at 1.

¹⁷ See *id.*; see also Gamage, *supra* note 2, 1.

¹⁸ Sedera Resp. at 1; see also de Silva Resp. at 1.

¹⁹ See, e.g., Preface, U.S. DEP'T OF STATE, FOREIGN CONSULAR OFFICES IN THE UNITED STATES (Feb. 5, 2014), <http://www.state.gov/documents/organization/221620.pdf>. The Consul General post for Sri Lanka is currently unoccupied, consistent with de Silva's representation in his Response. See *id.* at 115.

1 Given that the Complaint's assertion that de Silva is a foreign national is derived from a
2 speculative and unsupported factual inference that Respondents directly deny, the Commission
3 sees no reasonable basis on this record to conclude that de Silva may have provided a prohibited
4 foreign national contribution to Sedera in violation of the Act.²⁰ Accordingly, the Commission
5 finds no reason to believe that Sedera and the Committee accepted a prohibited in-kind
6 contribution or that de Silva made a prohibited in-kind contribution in violation of 52 U.S.C.
7 § 30121(a) (formerly 2 U.S.C. § 441e(a)).

²⁰ The Complaint also states that the *Asian Tribune* article reflects that de Silva "admitted that the Sri Lanka government would be assisting Sedera by sending former Sri Lanka military personnel to travel to Las Vegas, Nevada in mid-May to campaign for Sedera." Compl. at 1. In fact, the online piece states that "Former Sri Lankan military personnel were seen in large numbers joining their former Army colleague Malraj de Silva in support of Sanje Sedera candidacy." Gamage, *supra* note 2, at 1. In his Response, Sedera states that certain former Sri Lankan military personnel — "all of them US Citizens" — "expressed willingness to come to Las Vegas, Nevada to campaign on my behalf." Sedera Resp. at 1. As with the allegation concerning de Silva's foreign national status, the Complaint provides no basis to conclude that other individuals possibly formerly associated with the Sri Lankan military were "foreign nationals" under the Act, even assuming any such persons made contributions, directly or in-kind, to Sedera.